

Editor's note: 77 LD. 124.

J. D. ARCHER

IBLA 70-35

Decided September 23, 1970

Phosphate Leases and Permits: Permits

An application for a phosphate prospecting permit is properly rejected upon the basis of a previous determination by the Geological Survey that the land applied for is subject to the leasing provisions of the Mineral Leasing Act, without a review of the evidence relied upon in the initial determination, where no evidence is submitted suggesting error in that determination.

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IBLA 70-35 : Idaho 2181

J. D. ARCHER : Phosphate prospecting
: permit application rejected
: Affirmed

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

J. D. Archer has appealed to the Secretary of the Interior from a decision dated February 7, 1969, whereby the Office of Appeals and Hearings, Bureau of Land Management, affirmed a decision of the Idaho land office rejecting his application Idaho 2181, filed pursuant to section 9(b) of the Mineral Leasing Act, as added by the act of March 18, 1960, 30 U.S.C. § 211(b) (1964), for a phosphate prospecting permit.

Appellant's application was filed on March 18, 1968, for 520 acres of land in the SE 1/4 and N 1/2 SW 1/4 sec. 4, SE 1/4 SE 1/4 sec. 5, SW 1/4 NE 1/4 sec. 8, and N 1/2 SW 1/4, SE 1/4 NW 1/2, NW 1/4 NE 1/4 and SE 1/4 NE 1/4 sec. 9, T. 9 S., R. 43 E., B.M., Idaho. The application was rejected by the land office on October 24, 1968, upon the basis of information contained in a report from the Geological Survey dated August 15, 1968. According to that report, the described lands were included in phosphate lease application Idaho 015934, filed on January 8, 1965, by Don L. Mount, and although the lease application was subsequently withdrawn, the lands were, at that time, determined to be subject to the leasing provisions of the Mineral Leasing Act. See Don L. Mount, A-30682 (May 5, 1967).

Appellant challenged the action of the land office, arguing in an appeal to the Director, Bureau of Land Management, that the classification procedure prescribed by the law and the regulations was not followed and that no evidence was cited by the Geological Survey in its report which would show the lands to be subject to the leasing provisions of the Mineral Leasing Act.

The Office of Appeals and Hearings found, in its decision of February 7, 1969, that appellant had asserted, without substantiation, that the lands applied for are subject to the prospecting provisions of the Mineral Leasing Act and that he had, in effect, suggested that a reclassification of the land was required to be made pursuant to his application. After pointing out that a prospecting permit may not be issued for land when information is available from which the existence and workability of phosphate deposits within that land can be determined or inferred, it held that the lands in question had been found to contain sufficient phosphate to warrant development under the

leasing provisions of the act, that appellant's argument was not persuasive of error in the classification of the lands as suitable for leasing only and that appellant's application was, therefore, properly rejected.

In his current appeal, Archer again makes the bald assertion that the lands applied for are subject to the prospecting provisions of the Mineral Leasing Act for the reason that it is necessary to conduct exploration to determine the existence or workability of phosphate deposits. Again he fails to suggest why such exploration is necessary. The main thrust of his argument appears to be that his application cannot be rejected without a formal report, prepared in express response to his application, on the geology of the lands described in the application. He asserts that:

"The Geological Surveys [sic] position is that once having reported on portions of lands they have no further obligation to adjudicate further cases on their merits.

"There is no formal classification by the Survey, as required by the law and regulations. The application must be considered on its own merits as to the lands applied for.

"The Survey has filed no report specifically showing why the lands should be subject to leasing. * *

Undeniably, appellant's application "must be considered on its own merits". But what merits has the application which have not been considered?

Appellant does not explain what "law and regulations" have been violated or ignored in this case. The fact is that neither the statutes (30 U.S.C. §§ 211-214 (1964) nor the Department's regulations (43 CFR Part 3160, 1970 Rev.) ^{1/} prescribe the manner in which a determination as to whether or not land is subject to the issuance of a phosphate prospecting permit is to be reported. As a matter of practice, it is customary for a land office, upon receipt of an application for such a permit, to request the Geological Survey to determine whether or not the lands described in the application are subject to the prospecting provisions of the leasing act. Generally, in response to such a request, the Geological Survey prepares a report in which it sets forth the results of any exploratory work which may have been performed in the area and incorporates, by reference, published mineral survey reports and other pertinent data shedding light on the mineral character of the lands described in the application and in which it sets forth its conclusions with respect to the known presence of workable deposits of phosphate. The substance of that report is then incorporated into the decision which the land office issues in acting upon the application for a permit.

^{1/} The Department's regulations were revised on May 12, 1970, and the applicable regulations are now contained in 43 CFR Part 3500, 35 F.R. 9699 (June 13, 1970).

But while the foregoing procedure is normally followed, the Department is not precluded from deviating from the pattern in some particulars. The Director of the Geological Survey has been expressly entrusted by Congress with the "classification of the public lands and examination of the geological structure, mineral resources, and products of the national domain". 43 U.S.C. § 31 (1964). When the Geological Survey has concluded from the available geological data that further exploration is, or is not, needed to determine the existence or workability of phosphate deposits within a particular area, the Secretary may rely upon the reports of the Survey setting forth the conclusions reached without examining the technical data upon which those conclusions were based. See Carl Nyman, 59 I.D. 238 (1946); Roland C. Townsend, A-30142, A-30250 (September 14, 1965). In this instance, the Geological Survey simply reported that it had previously found the lands described in appellant's application to be suitable for leasing, and, upon the basis of its earlier determination, it recommended the rejection of the application. The only question presented on this appeal is whether such a report is an adequate basis for action by the land office. We find that it is.

This is not to say, of course, that appellant has no right to know what facts support the conclusions of the Geological Survey or to challenge those conclusions. Appellant is entitled, upon proper inquiry of the Geological Survey, to be advised of the factual basis for the Survey's conclusions and to question, for cogent reasons, the soundness of the Survey's determination. The record before us, however, contains no evidence of any attempt on the part of appellant to ascertain from the Geological Survey the basis for its initial determination that the lands now applied for are subject to leasing. In the absence of a showing that there was an abortive attempt to obtain additional information, we do not find that appellant has been denied fair consideration of his application. As no error has been shown in the determination that the lands are subject to leasing and are, therefore, not subject to the prospecting provisions of the Mineral Leasing Act, the application was properly rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Martin Ritvo, Member

I concur. I concur.

Edward W. Stuebing, Member

Anne Lewis, Member

